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LIBERTY MUTUAL FIRE INSURANCE COMPANY

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

LARGO CONCRETE, INC., a California
Corporation; N.M.N. CONSTRUCTION,
INC., a California Corporation,

Plaintiffs,

v.

LIBERTY MUTUAL FIRE INSURANCE
COMPANY, a Massachusetts Corporation,
and DOES 1 through 100, inclusive.

Defendants.

Case No. C07-04651 CRB (ADR)

Hon. Charles R. Breyer
[Complaint Filed: September 10, 2007]

**LIBERTY MUTUAL FIRE INSURANCE
COMPANY'S OBJECTIONS TO THE
DECLARATIONS SUBMITTED IN
SUPPORT OF PLAINTIFFS'
OPPOSITION TO LIBERTY MUTUAL'S
MOTION TO DISQUALIFY THE
ROXBOROUGH FIRM**

[Proposed Order Lodged Concurrently]

Date: December 21, 2007
Time: 10:00 a.m.
Place: Courtroom 8

AND RELATED COUNTERCLAIM

Defendant and counterclaimant Liberty Mutual Fire Insurance Company ("LMFIC") submits the following objections to the evidence submitted by plaintiff Largo Concrete, Inc. and plaintiff and counter-defendant N.M.N. Construction, Inc. (collectively "Plaintiffs") in support of their Opposition to LMFIC's Motion to Disqualify Roxborough, Pomerance & Nye from Representing Plaintiffs.

LMFIC'S GENERAL OBJECTION

LMFIC generally objects to paragraphs 2, 3, 4, 9, 10, 12, 23, and 24 of the Declaration of Nicholas P. Roxborough and paragraphs 2, 3, and 10 of the Declaration of Michael B. Adreani submitted in support of Plaintiffs' Opposition on the grounds that the information contained in these paragraphs regarding Mr. Roxborough's and Mr. Adreani's education and experience is entirely irrelevant to the issues before the Court on this Motion. Fed. R. Evid. 402.

LMFIC OBJECTIONS TO DECLARATION OF NICHOLAS P. ROXBOROUGH DATED NOVEMBER 30, 2007

<u>Portion of Declaration</u>	<u>Objections</u>
1. Liberty Fire's Best Practice documents were very similar to standard Best Practices that other carriers and TPA's in the industry utilize. As I recall, there was generally very little, if anything, that was unique about Liberty Fire's Best Practice Guidelines. (Roxborough Decl., pp. 5:3-5.)	Lacks foundation. Fed. R. Evid. 602. Hearsay. Fed. R. Evid. 802.
2. Attached hereto as Exhibit "A" is a true and correct copy of Best Practice Guidelines that one can get as a matter of public record on a website. These Best Practices are from a national claims expert, Doug McCoy	Lacks foundation. Fed. R. Evid. 602. Hearsay. Fed. R. Evid. 802.

<u>Portion of Declaration</u>	<u>Objections</u>
<p>1 who I deposed in the Republic Services action.</p> <p>2</p> <p>3 (Roxborough Decl., pp. 5:5-8.)</p> <p>4</p>	
<p>5 3. Generally, the areas covered in these Best</p> <p>6 Practices areas are typical of the areas covered by most</p> <p>7 workers' compensation claims Best Practices Guidelines</p> <p>8 in the industry.</p> <p>9 (Roxborough Decl., pp. 5:9-10.)</p> <p>10</p> <p>11</p>	<p>Lacks foundation. Fed. R. Evid. 602.</p> <p>Irrelevant. Fed. R. Evid. 402.</p> <p>Confuses the issues. Fed. R. Evid. 403.</p> <p>Hearsay. Fed. R. Evid. 802.</p>
<p>12 4. At the time, Kentucky counsel had already</p> <p>13 received from the various Liberty defendants, Best</p> <p>14 Practice Guidelines.</p> <p>15 (Roxborough Decl., pp. 6:25-27.)</p> <p>16</p>	<p>Lacks foundation. Fed. R. Evid. 602.</p> <p>Hearsay. Fed. R. Evid. 802.</p>
<p>17 5. At the time, they said they did not think much of</p> <p>18 Defendants' chances of succeeding on their motion to</p> <p>19 disqualify our firm.</p> <p>20 (Roxborough Decl., p. 7:17-19.)</p> <p>21</p>	<p>Hearsay. Fed. R. Evid. 802.</p>
<p>22 6. As I have done in the past with any associates who</p> <p>23 worked on a Liberty case, since Craig has been here, I</p> <p>24 instructed Mr. Phillips that Mr. Pynes is to have no</p> <p>25 involvement or access to the Remedy Temp or Largo</p> <p>26 cases.</p> <p>27 (Roxborough Decl., p. 8:18-20.)</p> <p>28</p>	<p>Hearsay. Fed. R. Evid. 802.</p>

1	<u>Portion of Declaration</u>	<u>Objections</u>
2 3 4 5 6 7	7. The information contained in these files contains no information regarding a civil law firm's strategies on how to defend the carrier or TPA in workers' compensation bad faith claims mishandling cases. (Roxborough Decl., p. 9:8-10.)	Lacks foundation. Fed. R. Evid. 602. Hearsay. Fed. R. Evid. 802.
8 9 10 11 12 13 14 15 16 17	8. A workers' compensation claim file simply contains the adjustor's notes, the medical records concerning the nature and extent of a worker's injury, whether the file had been investigated or not, whether the insured was defended in the action, records regarding payments of medical bills, medical liens, etc. Many of the records are indeed a matter of public record at the workers compensation appeals boards throughout California. (Roxborough Decl., p. 9:16-20.)	Lacks foundation. Fed. R. Evid. 602. Hearsay. Fed. R. Evid. 802.
18 19 20 21 22 23 24	9. There is absolutely nothing confidential in a workers' compensation claim file in terms of a carrier or third party administrator's strategies of defending itself against allegations of workers' compensation bad faith claims handling practices. (Roxborough Decl., p. 9:21-25.)	Lacks foundation. Fed. R. Evid. 602. Hearsay. Fed. R. Evid. 802. Irrelevant. Fed. R. Evid. 402. Argumentative.
25 26 27	10. As this honorable court can see, I did not learn anything about what Liberty Fire redacts in workers' compensation claim files from Mr. Pynes- I learned it	Lacks foundation. Fed. R. Evid. 602. Argumentative.

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<u>Portion of Declaration</u>	<u>Objections</u>
<p>1 from Liberty Fire and their retained civil litigation</p> <p>2 counsel, in the <u>Kimco</u> and <u>Remedy Temp</u> cases.</p> <p>3</p> <p>4 (Roxborough Decl., p. 10:18-20.)</p> <p>5</p>	
<p>6 11. In addition, I have reviewed the pleadings</p> <p>7 identified on this docket sheet and determined that neither</p> <p>8 Ms. Yee nor Lisa Kralik Hansen's name appear on any of</p> <p>9 the listed pleadings and the only pleading executed by Ms.</p> <p>10 Hansen was the Notice of Ex Parte Application and Ex</p> <p>11 Parte Application for an Order Staying the Action by</p> <p>12 Stipulation. Although this document was executed by Ms.</p> <p>13 Hansen, her name does not appear as attorney of record; it</p> <p>14 appears she executed the pleading simply on behalf of</p> <p>15 Susan Olson.</p> <p>16 (Roxborough Decl., pp. 11:1-6.)</p> <p>17</p>	<p>Lacks foundation. Fed. R. Evid. 602.</p> <p>Hearsay. Fed. R. Evid. 802.</p>
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LMFIC'S OBJECTIONS TO DECLARATION OF
MICHAEL B. ADREANI DATED NOVEMBER 30, 2007

<u>Portion of Declaration</u>	<u>Objections</u>
<p>1. What is different about Liberty is that Liberty does not have a standard workers' compensation claims manual. Rather, Liberty utilizes a document called "Best Practices" to instruct adjusters on how to handle workers' compensation claims. I have confirmed this with the receipt of documents throughout the years, the noted absence of a claims manual in document production, through deposition testimony of various witnesses on various cases, and through written discovery. Liberty has itself made the representation to me that it does not use a claims manual for its workers' compensation adjusters.</p> <p>(Adreani Decl., p. 3:5:11.)</p>	<p>Lacks foundation. Fed. R. Evid. 602.</p> <p>Hearsay. Fed. R. Evid. 802.</p>
<p>2. To the extent Liberty does utilize "Best Practices" and any other document in training and providing instruction or protocols to its adjusters in workers compensation cases, I was provided that information and documents prior to Mr. Pynes ever joining this firm.</p> <p>(Adreani Decl., p. 3:12-14.)</p>	<p>Lacks foundation. Fed. R. Evid. 602.</p>
<p>3. Liberty Fire responded that <u>all such documents had been produced</u> and, when pressed, confirmed that no claims manual is actually used by Liberty Fire.</p>	<p>Lacks foundation. Fed. R. Evid. 602.</p> <p>Hearsay. Fed. R. Evid. 802.</p>

<u>Portion of Declaration</u>	<u>Objections</u>
<p>1 (Adreani Decl., p. 4:17-18.)</p>	
<p>3 4. All documents related to the manner in which</p> <p>4 Liberty Fire handles workers' compensation claims, and</p> <p>5 how Liberty Fire trains workers' compensation adjusters,</p> <p>6 therefore, were in my firm's possession by the end of 2002</p> <p>7 — over two years before Mr. Pynes joined our firm.</p> <p>8 (Adreani Decl., pp. 4:25-5:1.)</p> <p>9</p>	<p>Lacks foundation. Fed. R. Evid. 602.</p>
<p>10 5. Specifically, my notes from <i>Kimco</i> indicate that all</p> <p>11 of the documents Liberty Fire considered its training and</p> <p>12 adjusting "manuals" were produced to me, and Bates</p> <p>13 labeled Nos. LM 50869-5 1987.</p> <p>14 (Adreani Decl., p. 5:2-4.)</p> <p>15</p>	<p>Lacks foundation. Fed. R. Evid. 602.</p> <p>Hearsay. Fed. R. Evid. 802.</p>
<p>16 6. I also specifically recall Liberty Fire's counsel</p> <p>17 acknowledging to me on the record of a deposition that,</p> <p>18 with regard to workers' compensation training and</p> <p>19 adjusting manuals used by Liberty Fire, "all such</p> <p>20 documents had been produced" in the <i>Kimco</i> case.</p> <p>21 (Adreani Decl., p. 5:6-9.)</p> <p>22</p>	<p>Lacks foundation. Fed. R. Evid. 602.</p> <p>Hearsay. Fed. R. Evid. 802.</p>
<p>23 7. It was well known to Ms. Hansen and Ms. Olson</p> <p>24 that Mr. Pynes was working at my firm at the time the</p> <p>25 <i>RemedyTemp</i> case was filed.</p> <p>26 (Adreani Decl., p. 6:1-2.)</p> <p>27</p> <p>28</p>	<p>Lacks foundation. Fed. R. Evid. 602.</p>

<u>Portion of Declaration</u>	<u>Objections</u>
<p>1 8. On one occasion, early in the case at an in person</p> <p>2 “meet and confer” under Central District Local Rule 7 at</p> <p>3 my office, both Ms. Hansen and Ms. Olson said hello to</p> <p>4 Mr. Pynes personally while in my office. On other</p> <p>5 occasions both Ms. Hansen and Ms. Olson asked me to say</p> <p>6 hello to Mr. Pynes.</p> <p>7 (Adreani Decl., p. 6:5-8.)</p> <p>8</p> <p>9</p>	<p>Lacks foundation. Fed. R. Evid. 602.</p> <p>Hearsay. Fed. R. Evid. 802.</p>
<p>10 9. During the course of the <i>RemedyTemp</i> case, I have</p> <p>11 received through discovery and Rule 26 all of the same</p> <p>12 training and adjusting materials I received in the <i>Kimco</i></p> <p>13 case, all with Liberty’s full knowledge of Mr. Pynes’</p> <p>14 employment at my firm.</p> <p>15 (Adreani Decl., p. 6:9-14.)</p> <p>16</p>	<p>Lacks foundation. Fed. R. Evid. 602.</p>
<p>17 10. At that time, co-counsel in Kentucky had long since</p> <p>18 obtained all of the workers’ compensation training and</p> <p>19 adjusting manuals, including Best Practices, from Liberty.</p> <p>20 These were all of the same documents I had seen in <i>Kimco</i></p> <p>21 and <i>RemedyTemp</i>. (Adreani Decl., p. 8:1-5.)</p> <p>22</p>	<p>Lacks foundation. Fed. R. Evid. 602.</p>

23 **LMFIC’S OBJECTIONS TO DECLARATION OF**

24 **CRAIG S. PYNES DATED NOVEMBER 30, 2007**

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<u>Portion of Declaration</u>	<u>Objections</u>
<p>26 1. The claim files I reviewed contained no confidential</p> <p>27 information regarding Liberty Mutual Insurance Company</p> <p>28</p>	<p>Lacks foundation. Fed. R. Evid. 602.</p>

1	<u>Portion of Declaration</u>	<u>Objections</u>
2 3 4 5 6	<p>or Liberty Mutual Fire Insurance Company and were individually titled "applicant's name versus Tony's Fine Foods".</p> <p>(Pynes Decl., p. 2:20-22.)</p>	<p>Hearsay. Fed. R. Evid. 802.</p> <p>Improper legal conclusion. Fed. R. Evid. 701.</p>
7 8 9 10 11 12 13 14	<p>2. At no time during my employment with Kern & Wooley did I ever seek or gain access to information that was confidential to Liberty Mutual Fire Insurance Company, or any other Liberty entity, regarding their policies or strategies associated with workers' compensation bad faith claims mishandling matters.</p> <p>(Pynes Decl., p. 4:17-20.)</p>	<p>Lacks foundation. Fed. R. Evid. 602.</p> <p>Improper legal conclusion. Fed. R. Evid. 701.</p>
15 16 17 18 19 20 21	<p>3. At no time during my employment with Kern & Wooley did I obtain any information that was confidential to Liberty Mutual Fire Insurance Company's, or any other Liberty entity, regarding their policies or strategies associated with workers' compensation bad faith claims mishandling litigation. (Pynes Decl., p. 4:21-24.)</p>	<p>Lacks foundation. Fed. R. Evid. 602.</p> <p>Improper legal conclusion. Fed. R. Evid. 701.</p>
22 23 24 25 26 27 28	<p>4. Before leaving Kern & Wooley, I personally discussed my offer to work for Roxborough, Pomerance & Nye with Lisa Kralik Hansen. We specifically discussed that the Roxborough, Pomerance & Nye firm handles workers' compensation bad faith claims cases distinct from the type of work I had done at Kern & Wooley. She agreed that this was a completely new area of practice for me and a</p>	<p>Hearsay. Fed. R. Evid. 802.</p>

<u>Portion of Declaration</u>	<u>Objections</u>
<p>1 wonderful opportunity for me to learn a completely</p> <p>2 different area of the legal practice.</p> <p>3</p> <p>4 (Pynes Decl., p. 6:3-8.)</p> <p>5</p>	
<p>6 5. However, by that time, I had seen other similar Best</p> <p>7 Practices Guidelines from other carriers and third party</p> <p>8 administrators. My recollection is that there was not</p> <p>9 anything very significantly different from the approximate</p> <p>10 six page document that I had seen in other cases.</p> <p>11 (Pynes Decl., pp. 7:5-7.)</p> <p>12</p>	<p>Lacks foundation. Fed. R. Evid. 602.</p> <p>Hearsay. Fed. R. Evid. 802.</p>
<p>13 6. Whatever evidence I reviewed in the Kentucky</p> <p>14 action was evidence that Kentucky counsel had obtained</p> <p>15 from defendants in that matter.</p> <p>16 (Pynes Decl., p. 7:15-20.)</p> <p>17</p>	<p>Lacks foundation. Fed. R. Evid. 602.</p>

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19 Respectfully Submitted by:

20 Dated: December 14, 2007

21 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

22

23 By



24 TED C. LINDQUIST, III

25 Attorneys for Defendant and Counterclaimant

26 LIBERTY MUTUAL FIRE

27 INSURANCE COMPANY

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